

**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:)

JEFFREY JAMES FIERRA, M.D.)

File No. 16-2005-166006

Physician's and Surgeon's)

Certificate No. C33192)

Respondent.)

DECISION

The attached Stipulated Surrender of License is hereby adopted as the Decision and Order of the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on November 28, 2005.

IT IS SO ORDERED November 21, 2005.

MEDICAL BOARD OF CALIFORNIA

By: _____

Steven Alexander, Chair

Panel A

Division of Medical Quality

1 BILL LOCKYER, Attorney General
of the State of California
2 JOSE R. GUERRERO
Supervising Deputy Attorney General
3 JANE ZACK SIMON, State Bar No. 116564
Deputy Attorney General
4 California Department of Justice
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5544
6 Facsimile: (415) 703-5480

7 Attorneys for Complainant

8 **BEFORE THE**
9 **DIVISION OF MEDICAL QUALITY**
10 **MEDICAL BOARD OF CALIFORNIA**
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

12 **JEFFREY JAMES FIERRA, M.D.**
1230 Orchard Heights Drive
13 Mayfield Heights, Ohio 44124

14
15 Physician and Surgeon's
16 Certificate No. C33192

17 Respondent.
18

Case No.16-2005-166006

**STIPULATED SURRENDER OF
LICENSE**

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
20 proceeding that the following matters are true:

21 1. David T. Thornton (Complainant) is the Executive Director of the Medical
22 Board of California, and maintains this action solely in his official capacity. Complainant is
23 represented in this matter by Bill Lockyer, Attorney General of the State of California, by Jane
24 Zack Simon, Deputy Attorney General.

25 2. Jeffrey James Fierra, M.D. (respondent) is representing himself in this
26 proceeding. His address is 1230 Orchard Heights Drive, Mayfield Heights, Ohio 44124.

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1 3. Respondent has received, read and understands the Accusation which is
2 presently on file and pending in case number 16-2005-166006, a copy of which is attached as
3 Exhibit A.

4 4. Respondent has carefully read and understands the charges and allegations
5 in Accusation No. 16-2005-166006. Respondent also has carefully read and understands the
6 effects of this Stipulated Surrender of License.

7 5. Respondent is fully aware of his legal rights in this matter, including the
8 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
9 counsel, at his own expense; the right to confront and cross-examine the witnesses against him;
10 the right to present evidence and to testify on his own behalf; the right to the issuance of
11 subpoenas to compel the attendance of witnesses and the production of documents; the right to
12 reconsideration and court review of an adverse decision; and all other rights accorded by the
13 California Administrative Procedure Act and other applicable laws.

14 6. Respondent voluntarily, knowingly, and intelligently waives and gives up
15 each and every right set forth above.

16 7. Respondent agrees that based on the action taken by the State Medical
17 Board of Ohio, cause exists to discipline his California physician and surgeon's certificate
18 pursuant to Business and Professions Code sections 141 and 2305. Respondent lives in Ohio
19 and has no intention of practicing medicine in California in the future. He wishes to surrender
20 his California license.

21 8. Respondent understands that by signing this stipulation he is enabling the
22 Medical Board of California to issue its order accepting the surrender of license without further
23 process. He understands and agrees that Board staff and counsel for complainant may
24 communicate directly with the Board regarding this stipulation, without notice to or participation
25 by respondent. In the event that this stipulation is rejected for any reason by the Board, it will be
26 of no force or effect for either party. The Board will not be disqualified from further action in
27 this matter by virtue of its consideration of this stipulation.

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9. Upon acceptance of this stipulation by the Board, respondent understands that he will no longer be permitted to practice as a physician and surgeon in California, and also agrees to surrender and cause to be delivered to the Board any license and wallet certificate in his possession before the effective date of the decision.

10. The admissions made by respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Medical Board or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

11. Respondent fully understands and agrees that if he ever files an application for relicensure or reinstatement in the State of California, the Board shall treat it as a petition for reinstatement, and respondent must comply with all laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed.

12. Respondent understands that he may not petition for reinstatement as a physician and surgeon for a period of three (3) years from the effective date of his surrender. Information gathered in connection with Accusation number 16-2005-166006 may be considered by the Division of Medical Quality in determining whether or not to grant the petition for reinstatement. For the purposes of the reinstatement hearing, the allegations contained in Accusation number 16-2005-166006 shall be deemed to be admitted by respondent, and respondent waives any and all defenses based on a claim of laches or the statute of limitations.

13. The parties understand and agree that facsimile copies of this Stipulated Surrender of License, including facsimile signatures thereto, shall have the same force and effect as the originals.

ACCEPTANCE

I have carefully read the above stipulation. I enter into it freely and voluntarily and with full knowledge of its force and effect, do hereby surrender my Physician and Surgeon's Certificate Number C33192 to the Division of Medical Quality, Medical Board of California, for its formal acceptance. By signing this stipulation to surrender my license, I recognize that upon

1 its formal acceptance by the Board, I will lose all rights and privileges to practice as a physician
2 and surgeon in the State of California and I also will cause to be delivered to the Board any
3 license and wallet certificate in my possession before the effective date of the decision.

4
5 DATED: 10.24.05.


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7 
8 **JEFFREY JAMES FIERRA, M.D.**
Respondent

9
10 **ENDORSEMENT**

11 The foregoing Stipulated Surrender of License is hereby respectfully submitted for
12 consideration by the Division of Medical Quality, Medical Board of California.

13
14 DATED: 11/1/05.

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16
17 **BILL LOCKYER, Attorney General**
of the State of California

18 
19 **JANE ZACK SIMON**
20 Deputy Attorney General

21 Attorneys for Complainant
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EXHIBIT A

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO July 19, 2005
BY Valerie Moore ANALYST

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3. This accusation is brought before the Division of Medical Quality of the

A. Section 2227 of the Code provides in part that the Board may revoke,

B. Section 125.3 of the Code provides, in part, that the Board may request the

C. Section 2305 of the Code provides, in part, that the revocation, suspension,

D. Section 2236 of the Code provides that the conviction of any offense

E. Section 141 of the Code

"(a) For any licensee holding a license issued by a board under the

1 respective state licensing board. A certified copy of the record of the disciplinary action
2 taken against the licensee by another state, an agency of the federal government, or by
3 another country shall be conclusive evidence of the events related therein.

4 "(b) Nothing in this section shall preclude a board from applying a
5 specific statutory provision in the licensing act administered by the board that provides
6 for discipline based upon a disciplinary action taken against the licensee by another state,
7 an agency of the federal government, or another country."

8 F. Welfare and Institutions Code section 14124.12 provides, in part, that a
9 physician whose license has been placed on probation by the Medical Board shall not be
10 reimbursed by Medi-Cal for "the type of surgical service or invasive procedure that gave
11 rise to the probation."

12 4. Respondent is subject to discipline within the meaning of section 141 and
13 is guilty of unprofessional conduct within the meaning of sections 2305 and 2236, as more
14 particularly set forth herein below. as more particularly set forth herein below.

15 **FIRST CAUSE FOR DISCIPLINE**

16 (Discipline, Restriction, or Limitation Imposed by Another State)

17 5. On or about February 4, 2005, the State Medical Board of Ohio issued an
18 Entry of Order regarding respondent's license to practice medicine in the State of Ohio. Under
19 the terms of the Entry of Order, respondent's Ohio medical license was permanently revoked,
20 with the revocation stayed, and a suspension of at least six months imposed. After at least six
21 months, respondent is permitted to apply for reinstatement of his license, provided he has
22 complied with specified conditions, including completion of a professional ethics course and a
23 course on workers' compensation billings. If respondent's license is ordered reinstated, it will be
24 subject to at least five years probation, with terms and conditions including a practice plan and a
25 practice monitor. The Entry of Order was based upon respondent's conviction, pursuant to a
26 guilty plea, of two misdemeanor counts of Workers' Compensation Fraud and one misdemeanor
27 count of Aggravated Theft.

1 Following the issuance of the Entry of Order, respondent filed an appeal of the
2 decision. On March 15, 2005, the Common Pleas Court of Franklin County, Ohio issued an
3 order staying the suspension of respondent's medical license, but ordering respondent not to
4 "perform any services for which a bill for service will be submitted, either directly or indirectly,
5 to the Ohio Bureau of Workers' Compensation."

6 Attached hereto as Exhibit A are true and correct copies of the Entry of Order
7 Before the State Medical Board of Ohio and the Decision and Entry Granting Appellant's
8 Motion for Stay of Agency Order Filed February 16, 2005 issued by the Common Pleas Court of
9 Franklin County, Ohio.

10 6. Respondent's conduct and the action of the State Medical Board of Ohio, as
11 set forth in paragraph 5, above, constitute unprofessional conduct within the meaning of section
12 2305 and conduct subject to discipline within the meaning of section 141(a).

13 **SECOND CAUSE FOR DISCIPLINE**

14 (Conviction of Crime)

15 7. On or about September 30, 2003, a Grand Jury indictment was issued
16 against respondent by the State of Ohio, Cuyahoga County, charging him with two counts of
17 fraud and one count of aggravated theft relating to respondent's workers compensation billing
18 and claims. On March 26, 2004, respondent entered a plea of guilty to misdemeanor workers
19 compensation fraud and aggravated theft. Respondent was ordered to pay \$150,000 in
20 restitution and to serve a six month jail term, with all but 10 days of the sentence suspended,
21 followed by three years of probation.

22 8. The foregoing constitutes the conviction of crimes substantially related to
23 the qualifications, functions or duties of a physician and surgeon, and is cause for discipline
24 pursuant to Business and Professions Code section 2236.

25 **PRAYER**

26 **WHEREFORE**, the complainant requests that a hearing be held on the matters
27 herein alleged, and that following the hearing, the Division issue a decision:

1. Revoking or suspending Physician and Surgeon's Certificate Number C33192, heretofore issued to respondent Jeffrey James Fierra, M.D.;

2. Revoking, suspending or denying approval of the respondent's authority to supervise physician assistants;

3. Ordering respondent to pay the Division the actual and reasonable costs of the investigation and enforcement of this case and to pay the costs of probation monitoring upon order of the Division; and

4. Taking such other and further action as the Division deems necessary and proper.

DATED: July 19, 2005

DAVID T. THORNTON
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

Exhibit A

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

JEFFREY JAMES FIERRA, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on January 12, 2005.

Upon the Report and Recommendation of Siobhan R. Clovis, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the modification, approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Jeffrey James Fierra, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Fierra's certificate shall be SUSPENDED for an indefinite period of time, but not less than six months.
- B. **INTERIM MONITORING:** During the period that Dr. Fierra's certificate to practice medicine and surgery in Ohio is suspended, Dr. Fierra shall comply with the following terms, conditions, and limitations:
 - 1. **Obey the Law and Terms of Criminal Probation:** Dr. Fierra shall obey all federal, state and local laws; all rules governing the practice of medicine and surgery in Ohio; and all terms of probation imposed by the Cuyahoga County Court of Common Pleas in criminal case number 442349.
 - 2. **Personal Appearances:** Dr. Fierra shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Order. Subsequent personal appearances

must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

3. **Quarterly Declarations:** Dr. Fierra shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Fierra's certificate to practice medicine and surgery until all of the following conditions have been met:

1. **Application for Reinstatement or Restoration:** Dr. Fierra shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Compliance with Interim Conditions:** Dr. Fierra shall have maintained compliance with all the terms and conditions set forth in Paragraph B of this Order.
3. **Certification of Compliance with the Terms of Criminal Probation:** At the time he submits his application for reinstatement or restoration, Dr. Fierra shall submit to the Board certification from the Cuyahoga County Court of Common Pleas, dated no earlier than sixty days prior to Dr. Fierra's application for reinstatement or restoration, indicating that Dr. Fierra has maintained full compliance with terms of probation in criminal case number 442349.
4. **Professional Ethics Course:** At the time he submits his application for reinstatement or restoration, Dr. Fierra shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.
5. **Course Requirement:** At the time Dr. Fierra submits his application for reinstatement or restoration, Dr. Fierra shall provide acceptable documentation of satisfactory completion of a course on Bureau of Workers Compensation billing, such course to be approved in advance by the Board or

its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Fierra submits the documentation of successful completion of the course or courses on Bureau of Workers Compensation billing, he shall also submit to the Board a written report describing the course, setting forth what he learned from the course, and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

6. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Fierra has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222 of the Revised Code to require additional evidence of his fitness to resume practice.

D. **PROBATION:** Upon reinstatement or restoration, Dr. Fierra's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:

1. **Terms, Conditions, and Limitations Continued from Suspension Period:** Dr. Fierra shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order.
2. **Practice Plan:** Within thirty days of the date of Dr. Fierra's reinstatement or restoration, or as otherwise determined by the Board, Dr. Fierra shall submit to the Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Fierra's activities and billing will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Fierra shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

At the time Dr. Fierra submits his practice plan, he shall also submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary or Supervising Member will give preference to a physician who practices in the same locale as Dr. Fierra and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Fierra and his medical practice, and shall review Dr. Fierra's patient charts and billing. The chart and billing review may be done on a random basis, with the frequency and number of charts and bills reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Fierra and his medical practice, and on the review of Dr. Fierra's patient charts and billing. Dr. Fierra shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Fierra's quarterly declaration.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Fierra must immediately so notify the Board in writing. In addition, Dr. Fierra shall make arrangements acceptable to the Board for another monitoring physician within thirty days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Fierra shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

3. **Monitoring Physician:** Within thirty days of the date of Dr. Fierra's reinstatement or restoration, or as otherwise determined by the Board, Dr. Fierra shall submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary and Supervising Member will give preference to a physician who practices in the same locale as Dr. Fierra and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Fierra and his medical practice, and shall review Dr. Fierra's patient charts and billing. The chart and billing review may be done on a random basis, with the frequency and number of charts and bills reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Fierra and his medical practice, and on the review of Dr. Fierra's patient charts and bills. Dr. Fierra shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Fierra's quarterly declaration.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Fierra must immediately so notify the Board in writing. In addition, Dr. Fierra shall make arrangements acceptable to the Board for another monitoring physician within thirty days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Fierra shall ensure that the previously designated monitoring physician also notifies

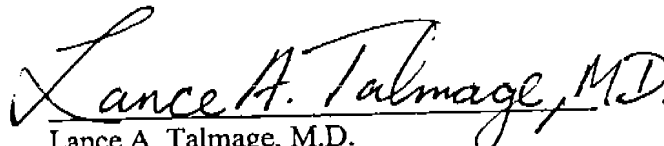
the Board directly of his or her inability to continue to serve and the reasons therefore.

4. **Tolling of Probationary Period While Out of State:** Dr. Fierra shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed.
 5. **Noncompliance Will Not Reduce Probationary Period:** In the event Dr. Fierra is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.
- E. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Fierra's certificate will be fully restored.
- F. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. Fierra violates the terms of this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- G. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Fierra shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Fierra shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.
- H. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Fierra shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Fierra shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration or restoration of any professional license. Further, Dr. Fierra shall provide this Board with a copy of

the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board.

This Order shall become effective immediately upon mailing of notification of approval by the Board.

(SEAL)


Lance A. Talmage, M.D.
Secretary

January 12, 2005
Date

STATE MEDICAL BOARD
OF OHIO

2004 NOV 12 P 1:59

**REPORT AND RECOMMENDATION
IN THE MATTER OF JEFFREY JAMES FIERRA, M.D.**

The Matter of Jeffrey James Fierra, M.D., was heard by Siobhan R. Clovis, Esq., Hearing Examiner for the State Medical Board of Ohio, on September 22, 2004.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated July 14, 2004, the State Medical Board of Ohio [Board] notified Jeffrey James Fierra, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board based its proposed action on the allegation that Dr. Fierra had been convicted of two misdemeanor counts of Workers' Compensation Fraud and one misdemeanor count of Aggravated Theft.

The Board alleged that the acts, conduct, and/or omissions of Dr. Fierra, individually and/or collectively, constitute: "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice," as that clause is used in R.C. 4731.22(B)(11)."

Accordingly, the Board advised Dr. Fierra of his right to request a hearing in this matter. (State's Exhibit 1A).

- B. On August 4, 2004, William T. McGinty, Esq., submitted a written hearing request on behalf of Dr. Fierra. (State's Exhibit 1B).

II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Kyle C. Wilcox, Assistant Attorney General.
- B. On behalf of the Respondent: William T. McGinty, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

Jeffrey James Fierra, M.D.

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A through 1J: Procedural exhibits.
2. State's Exhibit 2: Transcript of a March 22, 2004, plea hearing held in the case of *State v. Fierra*, Cuyahoga Case No. 442349 [*State v. Fierra*].
3. State's Exhibit 3: Transcript of an April 16, 2004, sentencing hearing held in the case of *State v. Fierra*.
4. State's Exhibit 4: Certified copy of a January 13, 2004, "Response to Defendant's Request for Bill of Particulars" filed in *State v. Fierra*.
5. State's Exhibit 5: Certified copy of the September 30, 2003, indictment filed in *State v. Fierra*.
6. State's Exhibit 6: Certified copies of March 26, 2004, and April 23, 2004, entries filed in *State v. Fierra*.

B. Board Exhibits

1. Board Exhibit A: Section 2913.02, Ohio Revised Code.
2. Board Exhibit B: Section 2913.48, Ohio Revised Code.

PROCEDURAL MATTERS

1. At hearing, the State moved to amend the date of Respondent's guilty plea, as set forth in the July 14, 2004, Notice of Opportunity for Hearing, from March 26, 2004, to March 22, 2004. Respondent did not object to the amendment. Further, State's Exhibit 2 demonstrates that Respondent pleaded guilty on March 22, 2004. Accordingly, the State's motion to amend was granted. (Hearing Transcript at 8-9; State's Exhibit 2).

2. Counsel for the State contacted the Hearing Examiner after the hearing, and requested the opportunity to submit an additional exhibit. Specifically, counsel requested the inclusion of State's Exhibit 1J, his September 17, 2004, Notice of Appearance in this case. Respondent did not object to the request. Accordingly, State's Exhibit 1J was admitted to the record. The hearing record closed on September 30, 2004.

SUMMARY OF THE EVIDENCE

All exhibits and transcripts of testimony, even if not specifically mentioned, were thoroughly reviewed and considered by the Hearing Examiner before preparing this Report and Recommendation.

1. Jeffrey James Fierra, M.D., testified that he had received his undergraduate degree in 1965, and his medical degree in 1969, both from Ohio State University. He stated that, from 1969 through 1970, he had completed a one-year internship at St. Joseph's Hospital in Phoenix, Arizona. He further stated that, beginning in 1970, he had worked for doctors and hospitals performing insurance exams. (Hearing Transcript [Tr.] at 13-14).

Dr. Fierra testified that, from 1976 through 1979, he had completed a residency in diagnostic radiology at University Hospitals in Cleveland. He advised that, after his residency, he had worked for the department of radiology at Lakewood Hospital for a year. He then worked at two private radiology offices. Dr. Fierra stated that, in 1974, he had begun working for the Industrial Commission of Ohio performing disability examinations. He further stated that, from 1985 through 1990, he had worked full-time for the Industrial Commission of Ohio in Cleveland. (Tr. at 14-16).

Dr. Fierra advised that, in or about 1990, the Bureau of Workers' Compensation [BWC] had taken over the medical function of the Industrial Commission of Ohio, and eliminated his position. He testified that, from 1990 through 1992 or 1993, he had worked at a diagnostic radiology office. He advised that he had then begun working for the Industrial Commission again, doing "combined effects reviews," and that he had also begun performing examinations for the BWC through two different companies. (Tr. at 16-17).

Dr. Fierra testified that he had been begun working at Detroit Clinic in 1994 and Buckeye Therapy in 1996, both of which were in Cleveland. He advised that he had worked as an independent contractor for both offices. He stated that he had worked "full-time or even more" at Buckeye Therapy, seeing mostly personal injury patients who had been referred by attorneys. Dr. Fierra further stated that he had worked one-to-two hours a week at Detroit Clinic, seeing worker's compensation patients. He advised that, at both offices, he had evaluated and documented injuries, and ordered treatments. (Tr. at 17-20).

Dr. Fierri testified that he currently practices occupational medicine at two offices run by himself, one in Cleveland and one in Akron. He stated that he sees about 30 patients per week, and that he also performs about 15 independent medical examinations per week. He advised that an independent medical examination is an examination "to determine the extent of impairment of an individual who's been involved in a Workers' Compensation injury." (Tr. at 11-12).

Dr. Fierri testified that he is also licensed to practice medicine in Alabama, Arizona, and California. (Tr. at 13).

2. On March 22, 2004, in the Cuyahoga Court of Common Pleas, Dr. Fierri pleaded guilty to, and was found guilty of, two first-degree misdemeanor counts of Workers' Compensation Fraud, in violation of Section 2913.48, Ohio Revised Code, as amended in Counts 1 and 2, as well as one first-degree misdemeanor count of Aggravated Theft, in violation of Section 2913.02, Ohio Revised Code. The court ordered Dr. Fierri to pay \$150,000.00 in restitution to the BWC. (State's Exhibits [St. Exs.] 2, 6).

On April 23, 2004, Dr. Fierri was sentenced, for each count, to a term of six months in county jail, to be served concurrently. All but 10 days of the sentence was suspended. Dr. Fierri was also fined \$1000.00 and sentenced to three years of probation. (St. Ex. 3; St. Ex. 6 at 2).

Dr. Fierri testified that he has already fully paid his restitution and served his time in jail. (Tr. at 24, 46).

3. Dr. Fierri testified that he did not know the details of the accusations against him:

A. [Dr. Fierri] I was never quite totally sure what the—I knew what the charges were, but I wasn't totally sure what they meant specifically.

Q. [Mr. Wilcox] What was your understanding of it?

A. That they—somebody believed I committed fraud and took money.

Q. And how did they explain that to you? How did you take the monies?

A. They said I billed the Bureau of Workers' Compensation and received the payments.

Q. Was it basically overbilling that they were telling you, that you billed them too much?

A. I think it was more aberrant than a billing. [sic]

Q. I'm sorry. What do you mean by that?

A. Aberrant. Improper billing.

(Tr. at 25-26).

4. Dr. Fierri denied responsibility for any wrongdoing. He explained that the charges had resulted from an investigation of Buckeye Therapy and Detroit Clinic, and that he had not been responsible for, or had any input in, billing at either location. Dr. Fierri had originally been indicted for three third-degree felonies. A third-degree felony carries a maximum sentence of five years in prison.¹ Dr. Fierri testified that he had pleaded guilty because he "didn't want to go to trial with three felony counts" and because he had feared prison and the revocation of his medical license. (Tr. at 26-30, 38-39, 46-47, 51, 53-55; St. Ex. 3; Board Exhibits A, B).

Dr. Fierri advised that he had been offered the plea bargain on the Friday before the Monday on which his trial was to start. Dr. Fierri further testified that it had been "very, very hard" to plead guilty because he "didn't do anything wrong." He stated that he had never received the \$150,000 in payments that he had been accused of unlawfully obtaining, but rather that the money had been paid to "Detroit Clinic, Inc." He testified that he had not received the money but had, in fact, been "grossly underpaid * * * [o]r not paid at all" for his work at Detroit Clinic. He stated that he had received a salary which amounted to about seven or eight thousand dollars over four years. (Tr. at 30-31, 36, 39, 50).

5. Dr. Fierri provided some information about his involvement with Buckeye Therapy and Detroit Clinic. He stated that none of the owners of these clinics had been physicians. He also advised that, at both locations, he had had no responsibility for keeping the medical records or for billing. He further advised that, during the relevant time period, most of his practice had been working at these two locations, but that he had also performed independent medical examinations at his own offices in Cleveland and Akron. (Tr. at 19, 26-27, 47).

Dr. Fierri testified that Buckeye Therapy had been owned by Raymond Gardini, and that an office manager had been responsible for the billing. He further testified that his contract with Buckeye Therapy prohibited his involvement in the business aspect of the practice. (Tr. at 18, 27, 56).

¹ Section 2929.14(A)(3), Ohio Revised Code

Dr. Fierra testified that Detroit Clinic had been owned by Gary Wayne Yano, with some possible ownership interest by Mr. Yano's wife. Dr. Fierra stated that, in 1996, he had begun renting his office space to the Yanos, because Dr. Fierra spent a lot of time outside his office. Dr. Fierra testified that he had only worked for Detroit Clinic for a few hours each week. He also testified that the Yanos had done the billing and that Mr. Yano had "hid[den] everything" from Dr. Fierra. He also stated that the Yanos had never provided him with any income documentation for tax purposes. (Tr. at 18-19, 26-27, 41, 56).

Dr. Fierra stated that, in or about March 2000, he had learned that he had been under investigation when one of the attorneys for Buckeye Therapy advised Dr. Fierra that the FBI had taken some files. He further testified that he had believed that the federal authorities had been seeking information about Timothy Misny, a personal injury attorney who had a "relationship" with Buckeye Therapy. Dr. Fierra testified that he had been questioned about Mr. Misny by the FBI, but that the federal investigation had not "go[ne] anywhere." (Tr. at 21, 31-33).

Dr. Fierra testified that he believes that he was indicted to pressure him for information about Mr. Misny or "the investors of Buckeye Therapy." He stated that he had not had any such information. Despite the suggestion that the owners of these clinics had been responsible for any unlawful activity, Dr. Fierra admitted that no one else that he had worked with at Buckeye Therapy or the Detroit Clinic had been indicted. (Tr. at 22 35, 47).

Dr. Fierra testified that he had never been aware of or approved improper billing practices. He stated that it had never been alleged that he had had any control over the checkbooks at Detroit Clinic or Buckeye Therapy; that his handwriting had appeared on any fraudulent reports; or that his handwriting had appeared on any checks or deposit slips. (Tr. at 34, 46-47).

6. Dr. Fierra testified that he is currently a certified provider for the BWC, but that he has received notice that the BWC has proposed to decertify him after a hearing. (Tr. at 12, 29).
7. Dr. Fierra admitted that he had not "work[ed] with the best people." However, he maintained that he had never harmed or wronged any patients, and that he had never filed any fraudulent reports. He testified that he has never been accused of issuing a false report, or a report that was not full and comprehensive. Dr. Fierra testified that he enjoys being a doctor and that he likes working with people. He stated that he has loved his work for the Industrial Commission and the BWC. Dr. Fierra also testified that he pays particular attention to billing in his own practice. (Tr. at 40, 43-44, 49-50, 58).

FINDINGS OF FACT

On March 22, 2004, in the Cuyahoga Court of Common Pleas, Jeffrey James Fierri, M.D., pleaded guilty to, and was found guilty of, two first-degree misdemeanor counts of Workers' Compensation Fraud, in violation of Section 2913.48, Ohio Revised Code, as amended in Counts 1 and 2, as well as one first-degree misdemeanor count of Aggravated Theft, in violation of Section 2913.02, Ohio Revised Code. During these proceedings, the court ordered Dr. Fierri to pay restitution of \$150,000.00 to the Ohio Bureau of Workers' Compensation.

Subsequently, on April 23, 2004, Dr. Fierri was sentenced to the county jail for six months on each of the three counts, to be served concurrently. All but 10 days of the sentence was suspended. Further, Dr. Fierri was fined \$1000.00 and sentenced to three years of probation.

CONCLUSIONS OF LAW

The guilty plea, and/or the judicial finding of guilt, of Jeffrey James Fierri, M.D., as set forth in the Findings of Fact, individually and/or collectively constitute "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code.

* * * * *

Dr. Fierri denies any responsibility for the crimes of which he has been convicted. Nevertheless, his guilty pleas and convictions are conclusive proof that he committed the crimes.²

PROPOSED ORDER

It is hereby ORDERED that:

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Jeffrey James Fierri, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Fierri's certificate shall be SUSPENDED for an indefinite period of time, but not less than eighteen months.
- B. **INTERIM MONITORING:** During the period that Dr. Fierri's certificate to practice medicine and surgery in Ohio is suspended, Dr. Fierri shall comply with the following terms, conditions, and limitations:

² Rule 4731-13-24, Ohio Administrative Code.

1. **Obeys the Law and Terms of Criminal Probation:** Dr. Fierra shall obey all federal, state and local laws; all rules governing the practice of medicine and surgery in Ohio; and all terms of probation imposed by the Cuyahoga County Court of Common Pleas in criminal case number 442349.
 2. **Personal Appearances:** Dr. Fierra shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Order. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
 3. **Quarterly Declarations:** Dr. Fierra shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
- C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Fierra's certificate to practice medicine and surgery until all of the following conditions have been met:
1. **Application for Reinstatement or Restoration:** Dr. Fierra shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
 2. **Compliance with Interim Conditions:** Dr. Fierra shall have maintained compliance with all the terms and conditions set forth in Paragraph B of this Order.
 3. **Certification of Compliance with the Terms of Criminal Probation:** At the time he submits his application for reinstatement or restoration, Dr. Fierra shall submit to the Board certification from the Cuyahoga County Court of Common Pleas, dated no earlier than sixty days prior to Dr. Fierra's application for reinstatement or restoration, indicating that Dr. Fierra has maintained full compliance with terms of probation in criminal case number 442349.
 4. **Professional Ethics Course:** At the time he submits his application for reinstatement or restoration, Dr. Fierra shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this

provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

5. **Personal Ethics Course:** At the time he submits his application for reinstatement or restoration, Dr. Fierra shall provide acceptable documentation of successful completion of a course or courses dealing with personal ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

6. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Fierra has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222 of the Revised Code to require additional evidence of his fitness to resume practice.

D. **PROBATION:** Upon reinstatement or restoration, Dr. Fierra's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:

1. **Terms, Conditions, and Limitations Continued from Suspension Period:**
Dr. Fierra shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order.
2. **Practice Plan:** Within thirty days of the date of Dr. Fierra's reinstatement or restoration, or as otherwise determined by the Board, Dr. Fierra shall submit to the Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Fierra's activities and billing will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Fierra shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

At the time Dr. Fierra submits his practice plan, he shall also submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary or Supervising Member will give preference to a physician who practices in the same locale as Dr. Fierra and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Fierra and his medical practice, and shall review Dr. Fierra's patient charts and billing. The chart and billing review may be done on a random basis, with the frequency and number of charts and bills reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Fierra and his medical practice, and on the review of Dr. Fierra's patient charts and billing. Dr. Fierra shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Fierra's quarterly declaration.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Fierra must immediately so notify the Board in writing. In addition, Dr. Fierra shall make arrangements acceptable to the Board for another monitoring physician within thirty days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Fierra shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

3. **Monitoring Physician:** Within thirty days of the date of Dr. Fierra's reinstatement or restoration, or as otherwise determined by the Board, Dr. Fierra shall submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary and Supervising Member will give preference to a physician who practices in the same locale as Dr. Fierra and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Fierra and his medical practice, and shall review Dr. Fierra's patient charts and billing. The chart and billing review may be done on a random basis, with the frequency and number of charts and bills reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Fierra and his medical practice, and on the review of Dr. Fierra's patient charts and bills. Dr. Fierra shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Fierra's quarterly declaration.

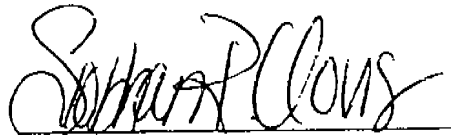
In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Fierra must immediately so notify the Board in writing. In addition, Dr. Fierra shall make arrangements acceptable to the Board for another monitoring physician within thirty days after the previously designated monitoring

physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Fierra shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

4. **Tolling of Probationary Period While Out of State:** Dr. Fierra shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed.
 5. **Noncompliance Will Not Reduce Probationary Period:** In the event Dr. Fierra is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.
- E. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Fierra's certificate will be fully restored.
- F. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. Fierra violates the terms of this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- G. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Fierra shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Fierra shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.
- H. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Fierra shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Fierra shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing

authority of any state in which he applies for any professional license or reinstatement or restoration or restoration of any professional license. Further, Dr. Fierro shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board.

This Order shall become effective immediately upon mailing of notification of approval by the Board.

A handwritten signature in black ink, appearing to read "Siobhan R. Clovis", written over a horizontal line.

Siobhan R. Clovis, Esq.
Hearing Examiner

IN THE COMMON PLEAS COURT OF FRANKLIN COUNTY, OHIO

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
CIVIL DIVISION

05 MAR 15 PM 4:10

JEFFREY J. FIERRA, M.D.,

CLERK OF COURTS-CV

APPELLANT,

CASE NO. 05CVF02-1764

v.

JUDGE SCHNEIDER

THE STATE MEDICAL BOARD OF OHIO,

APPELLEE.

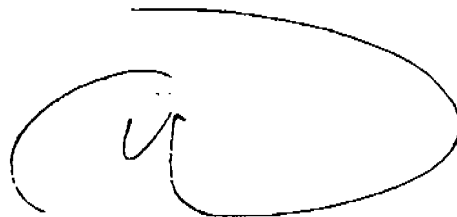
**DECISION AND ENTRY GRANTING APPELLANT'S MOTION
FOR STAY OF AGENCY ORDER FILED FEBRUARY 16, 2005.**

Rendered this 15 day of March, 2005.

Schneider, C., J.

This matter is before the Court on motion of Appellant, Jeffrey J. Fierra, M.D., for a stay of the agency order suspending his medical licensure for a minimum term of six months. It is ordered that his suspension effective February 4, 2005, shall be stayed, conditioned, however, on the following: Dr. Fierra shall not perform any services for which a bill for service will be submitted, either directly or indirectly, to the Ohio Bureau of Workers' Compensation.

IT IS SO ORDERED.



CHARLES A. SCHNEIDER, JUDGE

Copies to:

Kevin P. Byers, Esq.
Richard L. Salisbury, Esq.
Attorneys for Appellant

Kyle C. Wilcox, Esq.
Assistant Attorney General
Attorney for Appellee

STATE MEDICAL BOARD
OF OHIO
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